

AMENDED IN SENATE APRIL 14, 2011

SENATE BILL

No. 735

Introduced by Senator Price

February 18, 2011

~~An act to add Section 185034.4 to the Public Utilities Code, relating to high-speed rail. An act to amend Sections 21167.1, 21167.4, 21167.6, and 21167.8 of the Public Resources Code, relating to environmental quality.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 735, as amended, Price. ~~High-speed rail: contracts. Environmental quality: CEQA: judicial review: procedures.~~

(1) *The California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment or to adopt a negative declaration if it finds that the project will not have that effect. CEQA also requires a lead agency to prepare a mitigated negative declaration for a project that may have a significant effect on the environment if revisions in the project would avoid or mitigate that effect and there is no substantial evidence that the project, as revised, would have a significant effect on the environment.*

Existing law requires a court to commence a hearing of an action or proceeding brought to challenge an agency action on the grounds of noncompliance with CEQA within one year of the date of the filing of the action or proceeding.

This bill would require the hearing to commence within 9 months of the date of the filing of the action or proceeding.

(2) Existing law requires the court to establish a briefing schedule and a hearing date upon the filing of a request for hearing by a petitioner. Existing law requires the briefing to be completed within 90 days from the date of the filing of the request, to the extent feasible. Existing law authorizes the court to extend the briefing schedule upon a showing of good cause.

This bill would require the briefing to be completed within 90 days from the date of filing unless determined infeasible by the court. The bill would require the court to limit any extension of the briefing schedule for good cause to the shortest feasible period.

(3) Existing law requires a person filing an action or proceeding alleging noncompliance with CEQA to file a request with the public agency for the preparation of the administrative record subject to the challenge. Existing law requires the public agency to prepare and certify the administrative record within 60 days from the date of the request. Existing law authorizes the court to grant an extension for the preparation of the record. Existing law provides that the extension is to be liberally granted by the court.

This bill would instead require the public agency to prepare and distribute the administrative record to all parties for review within 45 days from the date of the request. Because the bill would require a public agency to distribute the administrative record, thereby increasing the level of service provided by the public agency, this bill would impose a state-mandated local program. The bill would require the parties to complete the review and the public agency to certify the record not later than 15 days after the distribution of the record for review. The bill would provide that the extension is to be granted in limited circumstances.

(4) Existing law requires a settlement meeting be held among the parties not later than 45 days after the filing of the action of proceeding alleging noncompliance with CEQA.

This bill would shorten that time period to 30 days.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law, the California High-Speed Rail Act, creates the High-Speed Rail Authority to develop and implement a high-speed rail~~

system in the state, with specified powers and duties. Existing law, pursuant to the Safe, Reliable High-Speed Passenger Train Bond Act for the 21st Century, approved by the voters as Proposition 1A at the November 4, 2008, general election, provides for the issuance of \$9.95 billion in general obligation bonds for high-speed rail and related purposes. Under federal law, funding is made available for allocation nationally to high-speed rail and other related projects.

This bill would require the authority, in awarding contracts for the construction of the high-speed rail system, to require that 25% of the workforce used at each worksite be from the local workforce. The bill would require the authority to also grant an additional contract price preference of 2.5% of the bid amount to qualified state-certified microbusinesses that are local to a worksite. The bill would require the Department of Housing and Community Development to evaluate the effect of these requirements and to submit quarterly reports to the authority in that regard. The bill would require the authority to include the findings of the department in its business plan.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 21167.1 of the Public Resources Code is
- 2 amended to read:
- 3 21167.1. (a) In all actions or proceedings brought pursuant to
- 4 Sections 21167, 21168, and 21168.5, including the hearing of an
- 5 action or proceeding on appeal from a decision of a lower court,
- 6 all courts in which the action or proceeding is pending shall give
- 7 the action or proceeding preference over all other civil actions, in
- 8 the matter of setting the action or proceeding for hearing or trial,
- 9 and in hearing or trying the action or proceeding, so that the action
- 10 or proceeding shall be quickly heard and determined. The court
- 11 shall regulate the briefing schedule so that, ~~to the extent feasible~~
- 12 ~~unless determined infeasible by the court,~~ the court shall commence
- 13 hearings on an appeal within ~~one year~~ *nine months* of the date of
- 14 the filing of the appeal.
- 15 (b) To ensure that actions or proceedings brought pursuant to
- 16 Sections 21167, 21168, and 21168.5 may be quickly heard and
- 17 determined in the lower courts, the superior courts in all counties
- 18 with a population of more than 200,000 shall designate one or

1 more judges to develop expertise in this division and related land
2 use and environmental laws, so that those judges will be available
3 to hear, and quickly resolve, actions or proceedings brought
4 pursuant to Sections 21167, 21168, and 21168.5.

5 (c) In an action or proceeding filed pursuant to this chapter that
6 is joined with any other cause of action, the court, upon a motion
7 by any party, may grant severance of the actions. In determining
8 whether to grant severance, the court shall consider such matters
9 as judicial economy, administrative economy, and prejudice to
10 any party.

11 *SEC. 2. Section 21167.4 of the Public Resources Code, as*
12 *amended by Section 5 of Chapter 496 of the Statutes of 2010, is*
13 *amended to read:*

14 21167.4. (a) In~~any~~ *an* action or proceeding alleging
15 noncompliance with this division, the petitioner shall request a
16 hearing within 90 days from the date of filing the petition or shall
17 be subject to dismissal on the court's own motion or on the motion
18 of~~any~~ *a* party interested in the action or proceeding.

19 (b) The petitioner shall serve a notice of the request for a hearing
20 on all parties at the time that the petitioner files the request for a
21 hearing.

22 (c) Upon the filing of a request by the petitioner for a hearing
23 and upon application by~~any~~ *a* party, the court shall establish a
24 briefing schedule and a hearing date. In the absence of good cause,
25 briefing shall be completed within 90 days from the date that the
26 request for a hearing is filed, and the hearing, ~~to the extent feasible~~
27 *unless determined infeasible by the court*, shall be held within 30
28 days thereafter. Good cause may include, but shall not be limited
29 to, the conduct of discovery, determination of the completeness
30 of the record of proceedings, the complexity of the issues, and the
31 length of the record of proceedings and the timeliness of its
32 production. *The court shall limit any extension of the briefing*
33 *schedule for good cause to the shortest feasible period.* The parties
34 may stipulate to a briefing schedule or hearing date that differs
35 from the schedule set forth in this subdivision if the stipulation is
36 approved by the court.

37 (d) In an action or proceeding alleging noncompliance with this
38 division, the Attorney General may file a motion with the court
39 seeking an expedited schedule for resolution of the case upon the
40 grounds that it would be in the public interest to do so. This

subdivision does not affect the rights of ~~any~~ a party under existing law to seek an expedited schedule for resolution of the case.

(e) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

SEC. 3. Section 21167.4 of the Public Resources Code, as added by Section 6 of Chapter 496 of the Statutes of 2010, is amended to read:

21167.4. (a) In any action or proceeding alleging noncompliance with this division, the petitioner shall request a hearing within 90 days from the date of filing the petition or shall be subject to dismissal on the court's own motion or on the motion of any party interested in the action or proceeding.

(b) The petitioner shall serve a notice of the request for a hearing on all parties at the time that the petitioner files the request for a hearing.

(c) Upon the filing of a request by the petitioner for a hearing and upon application by any party, the court shall establish a briefing schedule and a hearing date. In the absence of good cause, briefing shall be completed within 90 days from the date that the request for a hearing is filed, and the hearing, ~~to the extent feasible~~ *unless determined infeasible by the court*, shall be held within 30 days thereafter. Good cause may include, but shall not be limited to, the conduct of discovery, determination of the completeness of the record of proceedings, the complexity of the issues, and the length of the record of proceedings and the timeliness of its production. *The court shall limit any extension of the briefing schedule for good cause to the shortest feasible period.* The parties may stipulate to a briefing schedule or hearing date that differs from the schedule set forth in this subdivision if the stipulation is approved by the court.

(d) This section shall become operative on January 1, 2016.

SEC. 4. Section 21167.6 of the Public Resources Code is amended to read:

21167.6. Notwithstanding any other ~~provision~~ of law, in all actions or proceedings brought pursuant to Section 21167, except those involving the Public Utilities Commission, all of the following shall apply:

(a) At the time that the action or proceeding is filed, the plaintiff or petitioner shall file a request that the respondent public agency

1 prepare the record of proceedings relating to the subject of the
2 action or proceeding. The request, together with the complaint or
3 petition, shall be served personally upon the public agency not
4 later than 10 business days from the date that the action or
5 proceeding was filed.

6 (b) (1) The public agency shall prepare and ~~certify~~ *distribute*
7 the record of proceedings *to all parties for review* not later than
8 ~~60~~ 45 days from the date that the request specified in subdivision
9 (a) was served upon the public agency, *and the parties shall*
10 *complete the review and the public agency shall certify the record*
11 *not later than 15 days after the public agency distributed the record*
12 *for review*. Upon certification, the public agency shall lodge a copy
13 of the record of proceedings with the court and shall serve on the
14 parties notice that the record of proceedings has been certified and
15 lodged with the court. The parties shall pay any reasonable costs
16 or fees imposed for the preparation of the record of proceedings
17 in conformance with any law or rule of court.

18 (2) The plaintiff or petitioner may elect to prepare the record
19 of proceedings or the parties may agree to an alternative method
20 of preparation of the record of proceedings, subject to certification
21 of its accuracy by the public agency, within the time limit specified
22 in this subdivision.

23 (c) The time limit established by subdivision (b) may be
24 extended only upon the stipulation of all parties who have been
25 properly served in the action or proceeding or upon order of the
26 court. Extensions shall be ~~liberally~~ *granted in limited circumstances*
27 by the court ~~when~~ *if* the size of the record of proceedings renders
28 infeasible compliance with that time limit. There is no limit on the
29 number of extensions that may be granted by the court, but no
30 single extension shall exceed 60 days unless the court determines
31 that a longer extension is in the public interest.

32 (d) If the public agency fails to prepare, *distribute*, and certify
33 the record within the ~~time limit~~ *limits* established in paragraph (1)
34 of subdivision (b), or any continuances of ~~that those time limit~~
35 *limits*, the plaintiff or petitioner may move for sanctions, and the
36 court may, upon that motion, grant appropriate sanctions.

37 (e) The record of proceedings shall include, but is not limited
38 to, all of the following items:

39 (1) All project application materials.

1 (2) All staff reports and related documents prepared by the
2 respondent public agency with respect to its compliance with the
3 substantive and procedural requirements of this division and with
4 respect to the action on the project.

5 (3) All staff reports and related documents prepared by the
6 respondent public agency and written testimony or documents
7 submitted by any person relevant to any findings or statement of
8 overriding considerations adopted by the respondent agency
9 pursuant to this division.

10 (4) Any transcript or minutes of the proceedings at which the
11 decisionmaking body of the respondent public agency heard
12 testimony on, or considered any environmental document on, the
13 project, and any transcript or minutes of proceedings before any
14 advisory body to the respondent public agency that were presented
15 to the decisionmaking body prior to action on the environmental
16 documents or on the project.

17 (5) All notices issued by the respondent public agency to comply
18 with this division or with any other law governing the processing
19 and approval of the project.

20 (6) All written comments received in response to, or in
21 connection with, environmental documents prepared for the project,
22 including responses to the notice of preparation.

23 (7) All written evidence or correspondence submitted to, or
24 transferred from, the respondent public agency with respect to
25 compliance with this division or with respect to the project.

26 (8) Any proposed decisions or findings submitted to the
27 decisionmaking body of the respondent public agency by its staff,
28 or the project proponent, project opponents, or other persons.

29 (9) The documentation of the final public agency decision,
30 including the final environmental impact report, mitigated negative
31 declaration, or negative declaration, and all documents, in addition
32 to those referenced in paragraph (3), cited or relied on in the
33 findings or in a statement of overriding considerations adopted
34 pursuant to this division.

35 (10) Any other written materials relevant to the respondent
36 public agency's compliance with this division or to its decision on
37 the merits of the project, including the initial study, any drafts of
38 any environmental document, or portions thereof, that have been
39 released for public review, and copies of studies or other documents
40 relied upon in any environmental document prepared for the project

1 and either made available to the public during the public review
2 period or included in the respondent public agency's files on the
3 project, and all internal agency communications, including staff
4 notes and memoranda related to the project or to compliance with
5 this division.

6 (11) The full written record before any inferior administrative
7 decisionmaking body whose decision was appealed to a superior
8 administrative decisionmaking body prior to the filing of litigation.

9 (f) In preparing the record of proceedings, the party preparing
10 the record shall strive to do so at reasonable cost in light of the
11 scope of the record.

12 (g) The clerk of the superior court shall prepare and certify the
13 clerk's transcript on appeal not later than 60 days from the date
14 that the notice designating the papers or records to be included in
15 the clerk's transcript was filed with the superior court, if the party
16 or parties pay any costs or fees for the preparation of the clerk's
17 transcript imposed in conformance with any law or rules of court.
18 ~~Nothing in this~~ *This subdivision precludes does not preclude* an
19 election to proceed by appendix, as provided in Rule 8.124 of the
20 California Rules of Court.

21 (h) Extensions of the period for the filing of any brief on appeal
22 may be allowed only by stipulation of the parties or by order of
23 the court for good cause shown. Extensions for the filing of a brief
24 on appeal shall be limited to one 30-day extension for the
25 preparation of an opening brief, and one 30-day extension for the
26 preparation of a responding brief, except that the court may grant
27 a longer extension or additional extensions if it determines that
28 there is a substantial likelihood of settlement that would avoid the
29 necessity of completing the appeal.

30 (i) At the completion of the filing of briefs on appeal, the
31 appellant shall notify the court of the completion of the filing of
32 briefs, whereupon the clerk of the reviewing court shall set the
33 appeal for hearing on the first available calendar date.

34 *SEC. 5. Section 21167.8 of the Public Resources Code, as*
35 *amended by Section 7 of Chapter 496 of the Statutes of 2010, is*
36 *amended to read:*

37 21167.8. (a) Not later than 20 days from the date of service
38 upon a public agency of a petition or complaint brought pursuant
39 to Section 21167, the public agency shall file with the court a
40 notice setting forth the time and place at which all parties shall

1 meet and attempt to settle the litigation. The meeting shall be
2 scheduled and held not later than ~~45~~ 30 days from the date of
3 service of the petition or complaint upon the public agency. The
4 notice of the settlement meeting shall be served by mail upon the
5 counsel for each party. If the public agency does not know the
6 identity of counsel for a party, the notice shall be served by mail
7 upon the party for whom counsel is not known.

8 (b) At the time and place specified in the notice filed with the
9 court, the parties shall meet and confer regarding anticipated issues
10 to be raised in the litigation and shall attempt in good faith to settle
11 the litigation and the dispute that forms the basis of the litigation.
12 The settlement meeting discussions shall be comprehensive in
13 nature and shall focus on the legal issues raised by the parties
14 concerning the project that is the subject of the litigation.

15 (c) The settlement meeting may be continued from time to time
16 without postponing or otherwise delaying other applicable time
17 limits in the litigation. The settlement meeting, or a mediation
18 proceeding that is conducted pursuant to Chapter 9.3 (commencing
19 with Section 66030) of Division 1 of Title 7 of the Government
20 Code, is intended to be conducted concurrently with any judicial
21 proceedings.

22 (d) If the litigation is not settled, the court, in its discretion, may,
23 or at the request of a party, shall, schedule a further settlement
24 conference before a judge of the superior court. If the petition or
25 complaint is later heard on its merits, the judge hearing the matter
26 shall not be the same judge conducting the settlement conference,
27 except in counties that have only one judge of the superior court.

28 (e) The failure of a party, who was notified pursuant to
29 subdivision (a), to participate in the litigation settlement process,
30 without good cause, may result in an imposition of sanctions by
31 the court.

32 (f) Not later than 30 days from the date that notice of
33 certification of the record of proceedings was filed and served in
34 accordance with Section 21167.6, the petitioner or plaintiff shall
35 file and serve on all other parties a statement of issues that the
36 petitioner or plaintiff intends to raise in a brief or at a hearing or
37 trial. Not later than 10 days from the date on which the respondent
38 or real party in interest has been served with the statement of issues
39 from the petitioner or plaintiff, each respondent and real party in

1 interest shall file and serve on all other parties a statement of issues
2 which that party intends to raise in a brief or at a hearing or trial.

3 (g) This section shall remain in effect only until January 1, 2016,
4 and as of that date is repealed, unless a later enacted statute, that
5 is enacted before January 1, 2016, deletes or extends that date.

6 *SEC. 6. Section 21167.8 of the Public Resources Code, as*
7 *added by Section 8 of Chapter 496 of the Statutes of 2010, is*
8 *amended to read:*

9 21167.8. (a) Not later than 20 days from the date of service
10 upon a public agency of a petition or complaint brought pursuant
11 to Section 21167, the public agency shall file with the court a
12 notice setting forth the time and place at which all parties shall
13 meet and attempt to settle the litigation. The meeting shall be
14 scheduled and held not later than ~~45~~ 30 days from the date of
15 service of the petition or complaint upon the public agency. The
16 notice of the settlement meeting shall be served by mail upon the
17 counsel for each party. If the public agency does not know the
18 identity of counsel for any party, the notice shall be served by mail
19 upon the party for whom counsel is not known.

20 (b) At the time and place specified in the notice filed with the
21 court, the parties shall meet and confer regarding anticipated issues
22 to be raised in the litigation and shall attempt in good faith to settle
23 the litigation and the dispute which forms the basis of the litigation.
24 The settlement meeting discussions shall be comprehensive in
25 nature and shall focus on the legal issues raised by the parties
26 concerning the project that is the subject of the litigation.

27 (c) The settlement meeting may be continued from time to time
28 without postponing or otherwise delaying other applicable time
29 limits in the litigation. The settlement meeting is intended to be
30 conducted concurrently with any judicial proceedings.

31 (d) If the litigation is not settled, the court, in its discretion, may,
32 or at the request of any party, shall, schedule a further settlement
33 conference before a judge of the superior court. If the petition or
34 complaint is later heard on its merits, the judge hearing the matter
35 shall not be the same judge conducting the settlement conference,
36 except in counties that have only one judge of the superior court.

37 (e) The failure of ~~any~~ a party, who was notified pursuant to
38 subdivision (a), to participate in the litigation settlement process,
39 without good cause, may result in an imposition of sanctions by
40 the court.

(f) Not later than 30 days from the date that notice of certification of the record of proceedings was filed and served in accordance with Section 21167.6, the petitioner or plaintiff shall file and serve on all other parties a statement of issues which the petitioner or plaintiff intends to raise in any brief or at any hearing or trial. Not later than 10 days from the date on which the respondent or real party in interest has been served with the statement of issues from the petitioner or plaintiff, each respondent and real party in interest shall file and serve on all other parties a statement of issues which that party intends to raise in any brief or at any hearing or trial.

(g) This section shall become operative on January 1, 2016.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

~~SECTION 1. Section 185034.4 is added to the Public Utilities Code, to read:~~

~~185034.4. (a) (1) The authority, in awarding contracts for the construction of the high-speed rail system, shall require that 25 percent of the workforce used at each worksite be from the local workforce.~~

~~(2) The authority, in awarding contracts for the construction of the high-speed rail system, shall grant an additional price preference of 2.5 percent of the bid amount to qualified state-certified microbusinesses that are local to a worksite.~~

~~(b) The Department of Housing and Community Development shall evaluate the effect of the requirements in subdivision (a), and shall submit quarterly reports to the authority in that regard. The findings of the department shall be included in the authority's business plan prepared pursuant to Section 185033.~~

~~(c) As used in this section, the following terms have the following meanings:~~

~~(1) "Local workforce" means residents of the local workforce development area in which the worksite is located.~~

~~(2) "Local workforce development area" means one of 49 such areas in the state with a local board designated by the Governor pursuant to Section 14200 of the Unemployment Insurance Code.~~

1 ~~(3) “Microbusiness” means a microbusiness as defined in~~
2 ~~paragraph (2) of subdivision (d) of Section 14837 of the~~
3 ~~Government Code.~~

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